

**STRATEGIC SOURCING AGREEMENT
XEROX MULTIFUNCTION COLOR COPIER PRODUCTS AND SERVICES
UNIVERSITY OF CALIFORNIA CONTRACT #708/OP/011**

THIS BLANKET PURCHASE AGREEMENT ("Agreement") is made and entered into this 1st day of December, 2006, by and between The Regents of the University of California ("UC"), and Xerox Corporation ("Supplier") with its principle place of business at 800 Long Bridge Road, Stamford, Connecticut, 06904.

1. DEFINITIONS

As used in this Agreement and in any appendices and attachments which become part of it, the following terms have the following meanings:

- 1.1 "Business Day" shall mean Monday through Friday, between 8:00am-5:00pm, excluding UC and Supplier observed holidays. Supplier shall provide a Supplier holiday schedule on or before January 1, 2007 for the following calendar year.
- 1.2 "Account Manager" means the Supplier employee, agreed upon by UC, whom Supplier designates to UC as the person with overall responsibility as Supplier managing the UC/Supplier relationship under the Agreement.
- 1.3 "Product" or "Products" shall mean Supplier multifunctional color copiers as priced in Attachments 1A through 1N.

2. DESCRIPTION OF PROGRAM

- 2.1 General: During the term of this Agreement and any extension(s) of such term, Supplier agrees to sell, and lease products and services to UC as specified herein upon receipt of a valid UC purchase order. All such purchase orders shall be governed by the terms and conditions set forth in this agreement.

3. SCOPE

- 3.1 University of California Locations: This Agreement shall be extended to include all UC current and future locations.
- 3.2 California State University System: An Agreement of Understanding exists between The Regents of the University of California and The Trustees of the California State University System (CSU), establishing the California Higher Education Consortium (CHEC). Through a collaborative relationship, the Consortium seeks to combine procurement and contracting activities and efforts to the best value for goods and services, while reducing the total acquisition costs. Accordingly, the Agreement resulting from this solicitation shall recognize the participation of the 23 campuses and associated offices of the Trustees of the California State University with the following understandings:
 - Seller agrees to extend the product pricing and services to the CSU Institutions under the terms of this Agreement, under a separate CSU agreement,

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- All contractual administration issues regarding this Agreement (e.g. terms and conditions, extensions, renewals, etc.) shall remain the responsibility of the University of California. Operational issues, fiduciary responsibility, payment issues, performance issues and liabilities, and disputes involving individual CSU campuses shall be addressed, administered, and resolved by each CSU Campus. The University of California and the California State University system are separate and distinct governmental entities. As such, each administrative unit and campus therein is financially separate and shall be responsible for individual financial commitments. No fiduciary responsibility for performance liability, unless otherwise expressed, exists between the University of California and the California State University system.

3.3 State of California: This agreement is to be extended to the State of California, Department of General Services and all State of California offices and facilities. Through a collaborative relationship, the State of California and the University of California seek to combine procurement and contracting activities and efforts to the best value for goods and services, while reducing the total acquisition costs. Accordingly, the Agreement resulting from this solicitation shall recognize the participation of the State of California's Department of General Services and all State of California offices and facilities with the following understandings:

- Seller agrees to extend the product pricing and services to the State of California departments under the terms of this Agreement, under a separate State of California, Department of General Services agreement
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4. **PROGRAM REQUIREMENTS**

4.1 Project Manager: Supplier shall assign a project manager to coordinate implementation of this Agreement.

4.2 Program Administration: Supplier will provide the necessary staff and resources to support UC's program administration functions as outlined in the RFP and Supplier's Response, including, but not limited to:

- Providing on-site representation on a regular basis to increase sales activity by marketing Supplier Products to UC campuses, assist in resolving problems, demonstrate new Products, provide training as other customer services as required for the efficient operation of the program;
- Coordinating program implementation;

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- Coordinating program implementation;

- Coordinating all the order/installations processes, inquiries regarding order status, pricing, and invoicing;
- Providing superior customer service;
- Managing the continuous improvement process;
- Providing on-going contract monitoring and maintenance;
- Offering cost reduction and process improvement opportunities to UC;
- Conducting quarterly account review meetings.

4.3 Service Standards: During the term of this Agreement and any extension(s) of such term, Supplier shall provide the following minimum service standards:

- | | |
|---|---|
| • Uptime | 96% |
| • Response Time (by phone) | 1 hour |
| • Response Time (to location, by request) | 3 hours (target) |
| • Repair Time | 2 hours (target) |
| • Delivery (copiers) | 10 days |
| • Delivery (supplies) | 2 days |
| • Installation | Upon delivery, within 8 hours |
| • Return Customer Calls | Within 1 hour |
| • Resolve Billing Issues | Within 15 Days (85% of incorrect billings) |
| | Within 30 Days (100% of incorrect billings) |

During the term of this Agreement and any extension(s) of such term, Supplier shall provide after hours services based on the following service standards:

- | | |
|------------------------|---|
| Response Time Standard | 4 hours or less
(target)/emergency request |
| Repair Time Standard | 2 hours (target) |

Maintenance services requested and performed outside Supplier's normal business hours will be charged to UC at the rates provided in Attachment 2. Supplier will not charge UC more than thirty (30) minutes travel time for the services performed after normal business hours. Supplier agrees to use best effort to comply with the after hours service standards as defined in this paragraph.

4.4 Loaner Equipment: Loaners will be provided if available. If Xerox is unable to provide a loaner, Xerox will issue the University a credit equal to 1/30th of the monthly maintenance charge for each business day beyond two business days that the equipment is out of service.

4.5 Service Warranty: Supplier warrants that services will be performed in good workmanlike manner in accordance with the applicable service description. Supplier will service during the warranty as well as during the Service Contract through its own Service Organization. It is understood and agreed by UC that Supplier retains exclusive ownership and control of any proprietary software diagnostics utilized in servicing the Products.

4.6 Parts: Supplier will maintain parts in-stock for all equipment models purchased by the University of California for a period of seven (7) years or until Xerox

Corporation no longer supports the equipment commercially in the U.S., whichever comes first.

- 4.7 Non-Performance Penalty: Supplier agrees to credit UC for not complying with the services standards specified in paragraph 4.3, as follows:
- Maintenance Credit: Up to one hundred (100) percent credit on monthly base maintenance charge for copier availability of less than eighty (80) percent calculated for each copier as specified in Attachment 3.
 - Delivery Credit: Up to fifteen (15) percent of the UC net purchase price or monthly lease/rental charges calculated for each copier as specified in Attachment 4. The credit for late delivery will not apply in the event Supplier provides, within required delivery time, a loaner acceptable by UC ordering department.
- 4.8 FOB: FOB is UC destination.
- 4.9 Delivery Time: Delivery time is of the essence with respect to the performance of each and every condition, covenant, and agreement contained herein. UC has the option to accept or reject all Products delivered after promised delivery time, and in addition, may hold Supplier liable to all direct damages caused by late delivery as determined and documented by UC; provided, however, in no event shall the amount of such direct damages exceed UC documented replacement/substitution cost for Products ordered. Supplier will report any delivery delay whatsoever to the ordering location, as well as its cause, within two(2) days after Supplier is able to reasonably determine there will be such a delay, such report will be provided to UC by telephone, e-mail, or facsimile. Supplier shall keep UC fully informed and shall take all reasonable action in eliminating the cause of the delay. Despite any previous language to the contrary if late delivery is due to causes beyond the reasonable control and without the fault or negligence of Supplier, including by not limited to: acts of God, war, civil commotion, governmental action, fire, floods, unusually severe weather, explosions, earthquakes, strikes, walkouts, quarantine restrictions, or any other causes beyond reasonable control of Supplier, Supplier shall not have any late-delivery liability to UC.
- UC failure to take, or delay in taking delivery, when due to causes beyond the reasonable control and without the fault or negligence of UC, including, but not limited to: acts of God, war, civil commotion, governmental action, fire, floods, unusually severe weather, explosions, earthquakes, strikes, walkouts, quarantine restrictions, or any other causes beyond reasonable control of UC, shall not result in any liability to UC or Supplier.
- 4.10 Training: Supplier shall provide on-site general user and key operator training for each Product at the time of installation ("Initial Training"), follow-up and on-going training as requested by UC. Seller agrees to support all of UC training requirements at no charge to UC.
- 4.11 Environmental Sustainability: During the term of this Agreement and any extension(s) of such term, Supplier agrees that its Products will be compliant with the following environmental specifications:

- Complies with the EPA ENERGY STAR® Program, and equipped with reasonable recovery time from ENERGY STAR® power management modes;
 - Uses returnable or recyclable or remanufactured toner cartridges;
 - Uses an organic photoreceptor (if not organic, it must not contain arsenic, cadmium, or selenium);
 - Does not use wet process technology;
 - Does not emit ozone at a concentration in excess of 0.02 mg/m³;
 - Does not emit dust at a concentration in excess of 0.11 mg/m³;
 - Contains no polybrominated biphenyls (PBB's) or biphenyl ethers (PBDE's);
 - Does not emit styrene at a concentration in excess of 0.11mg/m³;
 - Is designed for remanufacturing and reuse of parts;
 - Contains materials made with recycled content;
 - Uses minimal packaging and/or supplier arranges for packaging to be taken back for reuse;
 - Can be taken back by the supplier at the end of its useful life for remanufacturing, refurbishing, or recycling of parts.
- 4.12 Web Site Development: Supplier agrees to develop and maintain a UC web site(s), including web commerce capability to meet each UC location requirements.
- 4.13 Technical Support: During the term of this Agreement and any extension(s) of such term, Supplier agrees to provide technical support as follows:
- Assist UC customers with installation and configuration of Seller's hardware/software for networked printing in a timely manner
 - Provide on-going Product hardware, software, and network support
 - Assist with the installation of Print Driver if necessary for (1) user workstation to assure operational integrity.
 - Provide technical support staff for Products. Such technical support staff shall have a strong working knowledge of all aspects of network printing across all platforms, including the following:
 - Hardware installation (network cards, etc);
 - Network administration (equipment, software, installation/configuration, printer driver; installation/configuration/ characteristics);
 - Troubleshooting.
- 4.14 Order Packaging and Labeling: Supplier agrees that each UC order of Supplier's Products will be labeled with the following information:
- Purchase order number;
 - Product description, manufacturer number for each item;
 - Any other information, as may be requested by UC and mutually agreed upon by UC and Supplier.

Packing slips shall be attached to the outside of the package such that it can be inspected by UC at the requesting department and/or receiving dock.

- 4.15 Environmentally Responsible Packaging: Supplier agrees to use good faith efforts to utilize environmentally responsible packaging and recycling practices to minimize the adverse effects or packaging on the environment.
- 4.16 Order Procedures: Orders placed shall be binding when accepted by an authorized representative of Supplier and an acknowledged copy of such acceptance has been communicated to UC. Each such order for any Products covered by this Agreement and all documents issued as a result thereof, shall be governed by this Agreement. Each order shall specify the quantity, description, price, and delivery point.

All invoices, packing lists, packages, shipping notices, and other written documents shall contain applicable UC order or release number and the Agreement number.

All Xerox purchase orders must include the following:

- Description (including all accessories, analyst fees, training fees, etc.);
- Price (both equipment price and maintenance price) with estimated copy charges if there is no allowance;
- Term (either maintenance term or lease term);
- Bill to, ship to, and install addresses;
- Period of performance for the full term;
- Trade (including Noteminder number if a Xerox financed trade) and months remaining (e.g. 32/36);
- Purchase option if a lease
- UC contract number, #708/OP/011

Any additional requirements due to changes in law or policy will be communicated to the University of California's Office of the President.

- 4.17 Invoicing: All invoices must clearly indicate the following information:

- California sales tax as a separate line item;
- Order and release number and the Agreement number;
- Description, quantity, catalog number and manufacturer number of the item ordered;
- Net cost of each item;
- Any applicable discount;
- Reference to original order number for all credit invoices issued.

Invoices will be submitted directly to the UC Accounts Payable Department at each UC location, unless the Supplier is notified otherwise by an amendment to the Agreement. Invoices will normally be paid within thirty (30) days of satisfactory Product delivery or receipt of current invoice.

Supplier accepts any and all responsibility for informing UC locations of Supplier's invoicing requirements. The University of California will not accept delays in delivery of Products and will impose penalties as outlined in Section 4.3 of this document if Supplier has not outlined to the UC location their requirements for information that must be presented on all purchase orders.

5.

PRICING AND APPLICABLE TAXES

- 5.1 The prices of Supplier's Products included in this Agreement shall not increase for the duration of this Agreement for existing models. Xerox will add direct replacement models to this Agreement at a price not to exceed that of the model being replaced. The prices of Supplier's services included in this Agreement shall not increase for the first twelve (12) month period of this Agreement. The following pricing Attachments are included as part of this Agreement:
- Attachment 1A Purchase Option/Configured Models
 - Attachment 1B Purchase Option/Components
 - Attachment 1C Three (3) Year Lease Option/Configured Models - (\$1 Buyout)
 - Attachment 1D Three (3) Year Lease Option/Components - (\$1 Buyout)
 - Attachment 1E Four (4) Year Lease Option/Configured Models - (\$1 Buyout)
 - Attachment 1F Four (4) Year Lease Option/Components - (\$1 Buyout)
 - Attachment 1G Five (5) Year Lease Option/Configured Models - (\$1 Buyout)
 - Attachment 1H Five (4) Year Lease Option/Components – (\$1 Buyout)
 - Attachment 1I Three (3) Year Lease Option/Configured Models – (FMV)
 - Attachment 1J Three (3) Year Lease Option/Components – (FMV)
 - Attachment 1K Four (4) Year Lease Option/Configured Models (FMV)
 - Attachment 1L Four (4) Year Lease Option/Components – (FMV)
 - Attachment 1M Five (5) Year Lease Option/Configured Models – (FMV)
 - Attachment 1N Five (5) Year Lease Option/Components – (FMV)
 - Attachment 2 Time and Materials
 - Attachment 3 Maintenance Credit
 - Attachment 4 Delivery Credit
- 5.2 Supplier agrees to extend the pricing terms for maintenance services and supplies included in this Agreement to Supplier's current population of Products placed at UC prior to the execution of this Agreement for models that are identical to the models in the bid. In the event that the current pricing for maintenance services and supplies is less compared to the pricing listed in Attachments 1A through 1N, the current pricing shall not change.
- 5.3 Price increases shall be subject to adjustments no more that once in each successive twelve (12) month period on August 1st of each year, if any, as negotiated by both parties. Any price increases require thirty (30) day prior written notification and no price increase shall exceed at any one time three percent (3%) or Consumer Price Index (CPI), whichever is less.
- 5.4 In the event that a certain Product line has a significant price increase in excess of five percent (5%), those prices shall be negotiated individually between both parties.
- 5.5 Price increases must be supported by documented evidence of Supplier's manufacturer price increases. UC shall benefit from any lower price offered to other State Universities, State University hospitals, State of California offices, or entities where the economic business and service terms and conditions are substantially similar. If Supplier's list price of Products is reduced, UC shall benefit from a corresponding reduction.
- 5.6 Supplier is advised that there is no mandatory use policy at UC, and Supplier must compete with other suppliers for UC orders. Therefore, Supplier shall guarantee that manufacturer and/or Supplier price decreases be passed onto UC immediately.

- 5.7 The prices of Supplier's Products recited on Attachments 1A-1N includes installation and set-up of the Products in the location requested by UC. It also includes the key operator and location users initial, on-going training, and Product removal costs of UC-owned equipment.
- 5.8 During the term of this Agreement and any extension(s) to such term, Supplier agrees to provide UC a quarterly Patronage Incentive in the amount equal to two percent (2%) of the total sales of Products and supplies. The amount of quarterly Patronage Incentive provided to each UC campus will be calculated based on the total quarterly sales to each location. The Patronage Incentive will be issued to The Regents of the University of California and mailed to each UC location participating in the incentive program.
- 5.9 The following UC campuses provide Centralized Copier Programs:
- UC Berkeley
 - UC Davis
 - UC Riverside
 - UC San Diego
 - UC Santa Cruz

To the above locations with Centralized Copier Programs, Supplier will offer a five percent (5%) additional discount off UC's contracted cost per copy and overage rates as they apply to maintenance. The Centralized Copier Programs will reduce vendor sales, service, administrative, and delivery costs and include, but are not limited to the following (these services vary by location):

- Consultation and equipment needs assessment with location departments designed to "right size" and provide department with appropriate machine;
- Consolidation of copier orders for volume deliveries and meter read reporting;
- Centralized invoice reconciliation;
- Coordination of campus services for delivery access, electrical upgrades, network access, copy control systems, help desk troubleshooting, and service call reduction;
- Mediation in customer equipment expectations and performances issues.

6. REPORTING

- 6.1 Supplier will provide UC monthly and quarterly reports as follows:
- Population of digital copiers sorted by organization, model and acquisition method;
 - Monthly performance reports;
 - Monthly cost reports.
- 6.2 Supplier agrees to provide other reports as reasonably requested by UC during the term of the Agreement and any extension(s) to such term at no cost to UC.

7. SURVEYS

- 7.1 Supplier shall, at UC request, conduct customer satisfaction surveys. The content of these surveys shall be approved by UC. UC shall be responsible for the tabulation of these surveys.

8. **TRADE-INS**

- 8.1 Supplier will pick up University owned Equipment and dispose of the equipment in an environmentally appropriate manner at no additional cost to UC.

9. **MAINTENANCE SERVICE**

- 9.1 Supplier agrees to provide to UC, during Supplier's normal business hours, the maintenance service necessary to keep the Product in, or restore the Product to, good working order in accordance with Supplier's policies then in effect. This maintenance service includes maintenance, based upon the specific needs of Individual Product, as determined by Supplier, and unscheduled, on-call remedial maintenance.

Maintenance will include lubrication, adjustments, and the replacement of maintenance parts deemed necessary by Supplier. Maintenance parts will be furnished on an exchange basis, and the replaced parts become the property of Supplier. Maintenance services provided under this Agreement does not assure uninterrupted operation of the Product.

Maintenance service requested and performed outside Supplier's normal business hours will be charged to UC at Supplier's applicable time and material rates and terms as provided in Attachment 3.

Maintenance costs must be fixed or lowered during the term of the contract. Maintenance costs cannot increase in price during the term of the contract.

- 9.2 Maintenance Options: During the term of this Agreement and any extension(s) of such term, Supplier agrees to provide maintenance services based on the Following options:

Option 1: Cost Per Copy (CPC) Charge (Service and Supplies only)

Supplier will provide full service maintenance, including parts and labor, and charge UC on a monthly basis, based on a cost per copy charge applied to the actual monthly copy volume without any minimum and/or maximum copying restrictions.

Option 2: Monthly Minimum Charge

Supplier will provide full service maintenance, including parts and labor and charge UC a fixed monthly minimum charge, which will include a monthly copy volume allowance, and a cost per copy charge for the overage.

Option 3: T&M-Fixed Charge per Occurrence

Supplier will provide its service maintenance, based on Time and Material option and charge UC a fixed amount per occurrence and/or a fixed hourly fee, which will exclude replacement parts.

- 9.3 Maintenance service provided by Supplier under this Agreement does not include:

- A. Repair of damage or increase in service time caused by failure of UC continually to provide a suitable installation environment with all facilities prescribed by Supplier, including, but not limited to, the failure to provide adequate electrical power, air-conditioning, or humidity control;

- B. Repair of damage or increase in service time caused by: accident, disaster (which shall include but not be limited to, fire, flood, water, wind and lightening); transportation, neglect, power transients, abuse or misuse, failure of UC to follow Supplier's published operating instructions, and unauthorized modifications or repair of Product by persons other than authorized representatives of Supplier;
- C. Repair of damage or increase in service time caused by use of the Product for purposes other than those for which designed;
- D. Replacement of parts which are consumed in normal Product operation, unless specifically included;
- E. Furnishing of supplies or accessories, painting or refinishing the Product or furnishing the material therefore, inspecting altered Product, performing services connected with relocation of Product or adding or removing accessories, attachments, or other devices;
- F. Repair of damage, replacement of parts (due to other than normal wear) or repetitive service calls caused by use of incompatible supplies;
- G. Complete unit replacement or refurbishment of the Product;
- H. Electrical work external to the Product or maintenance of accessories, attachments, or other devices not furnished by the Supplier;
- I. Increase in service time caused by UC denial of full and free access to the Product or denial of departure from UC site.

The foregoing items excluded from Maintenance Service, if performed by Supplier, will be charged to UC at Supplier's applicable time and material rates and terms.

10. INSTALLATION

- 10.1 Installation shall be deemed completed upon successful conclusion of Supplier's standard test procedures.

11. PERFORMANCE

- 11.1 Supplier warrants that all Products will perform according to Supplier-published specifications.
- 11.2 Supplier warrants that all New Products will perform to UC satisfaction. In the event that UC is not satisfied with the performance of Supplier's Product(s), Supplier agrees to the following terms:
 - Upon UC approval, Supplier will provide a replacement with the same or comparable Supplier's Product(s) at no charge to UC.
 - In the event that UC customer is not satisfied with the replacement and upon UC request, Supplier will remove the Product(s) from UC site and terminate all the remaining charges. In the event of a purchased Product(s), Supplier will credit UC based on a prorated amount of the Product(s) purchase price, if Product(s) removed within first three (3) years of purchase date.

Applicable to Lease Transactions: If Supplier cannot maintain the replacement machine at a 96% fully operational level over any given three month period (based on 8 hours a day, five days per week, Monday through Friday) and the University has not caused Supplier' failure to keep the equipment in good working order, the University may

cancel the Lease for the equipment without penalty and without any further compensation due Supplier.

Applicable to Sale Transactions: If Supplier cannot maintain the replacement machine at a 96% fully operational level over any given three month period (based on 8 hours a day, five days per week, Monday through Friday) and the University has not caused Supplier' failure to keep the equipment in good working order, the University may cancel the Equipment. Supplier will credit UC an amount equal to the 1/36th of the original purchase price, times the number of months remaining in the initial 36 month installation period.

12. PRODUCTS ACQUISITION TERMS AND CONDITIONS

The Products, supplies and services included in this Agreement shall be furnished to UC based on the following terms and conditions:

12.1 PURCHASE OPTION

12.1.1. Supplier agrees to sell to UC Products recited Attachments 1A-12N, if requested by UC in accordance with the requirements set forth in this Agreement. Supplier shall warrant that the Products are new and owned by Supplier. Supplier warrants that it will repair or replace defective Products an/or parts, including labor, at no cost to UC for ninety (90) days after the installation date.

12.2 FMV LEASE OPTION

12.2.1. Supplier agrees to Lease to UC, Products recited in Attachments 1A-1N, if requested by UC, for the three (3), four (4), and five (5) year FMV lease terms in accordance with the requirements set forth in this Agreement. Supplier shall warrant that the Products are new, and owned by Supplier. The UC agrees to maintain the leased equipment for the life of the lease under one of the quoted maintenance plans. Supplier warrants that it will repair or replace defective Products and/or parts, including labor, for the life of the lease at no additional charge.

12.2.2. UC shall pay the Leaser payments and other payments, if any, shown on each order to Supplier at its address set forth thereon, or as otherwise directed by Supplier, in writing. Lease rates must remain constant for the entire term of the lease.

12.2.3 No loss or damage, except for loss or damage due solely to the negligence of Supplier, shall relieve UC of the obligation to pay any Lease payment or of any other obligation under this Agreement. In the event of loss or damage not attributable solely to the negligence of Supplier, UC, at the option of Supplier shall:

- A. Place the Product in good condition and repair: or,
- B. Replace the Product with like equipment in good condition and repair with clear title in Supplier and subject to all of the terms and conditions of this Agreement: or,

- C. Pay to Supplier the sum of all Lease payments due and owing at the time of such loss or damage and the fair market value of the Equipment

Upon replacement of the Product pursuant to subparagraph (B) above or upon Supplier's receipt of the payment provided for in subparagraph (C). UC and/or UC insurer shall be entitled to Supplier's interest in the original Product, for salvage purposes, at its then-current condition and location. As is, where is, without any warranty, express or implied.

12.2.4. UC shall have an option to purchase the Product AS IS, WHERE IS, by giving the Supplier at least thirty (30) days prior notice of UC intent to purchase at the termination of the term specified in any order or any renewal thereof. The purchase price shall be the Product's then fair market value plus all applicable sales taxes.

12.2.5. Leases, lease renewals, or extensions, there are two different extension options available to the University:

- Option 1: Upon expiration, the University may lease the current equipment at the same monthly price on a month-to-month bases. This type of lease extension may be cancelled without penalty upon 30 (thirty) day written notice. UC must be notified thirty days in advance and agree to the extension of the contract;
- Option 2: Upon expiration, the University also has the option to have Xerox provide a quote on a new 12 (twelve) or 24 (twenty-four) month lease on the current equipment. This will yield a lower monthly price, however the University would not be able to cancel the lease without termination charges until expiration on the new extended lease.

12.2.6 Leases are non-cancelable. Early cancellation of individual leases without cause or cancellation of an individual leases by Xerox due to the University's material breach will result in an early termination charge that is equal to the sum of the remaining payments less any unearned charges. In no event shall the amount paid exceed the total contracted price, minus payments already made.

12.3 \$1 BUY-OUT LEASE OPTION

12.3.1. Supplier agrees to Lease to UC Products recited in Attachment 12(A), if requested by UC, for the three (3), four (4), and five (5) year Lease terms in accordance with the requirements set forth in this Agreement. Supplier shall warrant that the Products are new, and owned by Supplier. Supplier warrants that it will repair or replace defective Products and/or parts, including labor at for life of the lease at no additional charge.

12.3.2. UC shall pay the Lease payments and other payments, if any, shown on each order to Supplier at its address set forth thereon, or as otherwise directed by Supplier in writing. Lease rates must remain constant for the entire term of the lease.

12.3.3. No loss or damage except for loss or damage due to solely to the negligence of Supplier, shall relieve UC of the obligation to pay any Lease payment or of any other obligation under this Agreement. In the event of loss or damage not attributable solely to the negligence of Supplier, UC, at the option of Supplier shall:

- a) Place the Product in good condition and repair: or
- b) Replace the Product with like equipment in good condition and repair with clear title in Supplier and subject to all of the terms and conditions of this Agreement: or
- c) Pay to Supplier the sum of all Lease payments due and owing at the time of such loss or damage and the \$1 buy-out of the equipment from the date of such loss or damage.

Upon replacement of the Product pursuant to subparagraph (b) above or upon Supplier's receipt of the payment provided for in subparagraph (c). UDC and/or UC insurer shall be entitled to Supplier's interest in the original Product and for salvage purposes, at its then-current condition and location. AS IS, WHERE IS, WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED.

12.3.4. UC shall have an option to purchase the Product AS IS, WHERE IS, by giving Supplier at least thirty (30) days prior notice of UC intent to purchase at the termination of the term specified in any order or any renewal thereof. The purchase price shall be \$1 plus all applicable sales taxes.

12.3.5. At the end of the lease term, UC shall either (i) purchase the leased Product for \$1 or (ii) have Supplier remove the leased Product.

12.3.6. Leases are non-cancelable. Early cancellation of individual leases without cause or cancellation of an individual lease by Xerox due to the University's material breach will result in an early termination charge that is equal to the sum of the remaining payments less any unearned charges. In no event shall the amount paid exceed the total contracted price, minus payments already made.

13. GENERAL TERMS AND CONDITIONS

13.1 University of California Terms and Conditions: University of California Terms and Conditions, Appendices "A" and "F," Supplements 2-5, and Exhibits A-C as attached, are hereby incorporated and shall govern this Agreement.

Supplier will contract separately with the California State University System and The State of California and incorporate each organization's specific provisions and requirements.

13.2 Insurance Requirements: Supplier shall furnish a Certificate of Insurance as specified in Appendix "A," All certificates shall indicate that the Regents of the University of California has been endorsed as an additional insured. The Certificate must be submitted to the Strategic Sourcing Department prior to the commencement of services. Certificates of Insurance should be delivered to:

Lesley Clark
Strategic Sourcing, Office of the President
University of California
1111 Franklin Street, 10th Floor
Oakland, California 94607-5200

13.3 Product Certification: Supplier hereby certifies and warrants that all Products sold to UC under this Agreement:

- Shall be new and genuine, which does not preclude the producer from using recycled content;
- Shall be provided with newly manufactured or factory produced new model;
- Shall be provided to UC in the manufacturer's original packaging unless otherwise requested by UC;
- Shall be manufactured and sold or distributed to the Supplier for retail sales in the United States;
- Shall be sold to the Supplier from legal and reputable channels, which are understood to be the manufacturer or authorized representatives of the manufacturer;
- Shall not be altered or misbranded within the meaning of the Federal and State laws applicable to such products

13.4 Auditing Requirements: This Agreement and any orders resulting therefrom shall be subject to examination and audit by University and /or State of California for a period of three (3) years after final payment. The examination and audit shall be confined to those matters connected with the performance of this Agreement.

13.5 Warranties: Supplier agrees that the Products furnished under this Agreement shall be covered by the most favorable commercial warranties the Supplier gives to any customer for the same or substantially similar Products, and that the rights and remedies so provided are in addition to and do not limit any rights afforded to UC by any other article in this Agreement and any subsequent Agreement or extension of Agreement. Such warranties will be effective notwithstanding prior inspection and/or acceptance of the Products by UC.

13.6 Term of the Agreement: Unless terminated as provided below, this Agreement shall be effective for a period of (5) years, commencing on December 1, 2006 and ending on November 30, 2011. UC reserves the right to renew or extend the Agreement for up to three (3) additional one-year periods under the same terms and conditions.

13.7 Termination of Agreement: UC may terminate this Agreement for convenience at any time, in whole or in part, in accordance with the terms of Article 4 of the University of California Terms and Conditions, Appendix "A," as attached. In the event of such termination, UC agrees to provide the Supplier at least thirty (30) days prior written notice of the effective date of termination and the extend thereof, such termination shall not affect any leased unit that has not fulfilled the appropriate term.

If any termination of this Agreement takes place, Supplier shall extend to UC, upon UC request, an additional ninety (90) day period to properly implement a

smooth transition. Fees for the services performed during the additional ninety (90) days will be in good faith and negotiated between UC and Supplier.

In the event Supplier cannot or does not perform its obligations, UC reserves the right to terminate this Agreement. If within thirty (30) working days of receipt of written notice from UC of Supplier's breach of any term or condition of the Agreement, Supplier shall fail to remedy such breach, then UC may at any time, by written notice, terminate the Agreement in whole or in part.

- 13.8 Marketing References: Supplier shall not make reference to UC, in any literature, promotional material, brochures, or sales presentations, without the express written consent of a duly authorized officer of UC.
- 13.9 Amendments: Any changes to the Agreement requested by either party shall be effective only if mutually agreed in writing by duly authorized representatives of UC and Supplier. This Agreement shall not be modified or amended or any right of a party waived except by such written amendment.
- 13.10 Failure to Enforce: Failure by either party at any time to require performance by the other party or to claim a breach of any provision of this Agreement shall not be construed as effecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto.
- 13.11 Partial Invalidity: Any provisions of this Agreement that shall prove to be invalid, void, or illegal, shall in no way impair, or invalidate any other provisions hereof, and such other provisions shall remain in full force and effect.
- 13.12 Governing Law: The rights and obligations of the parties, and all interpretations and performance of this Agreement shall be governed in all respects by the laws of the State of California.
- 13.13 Relationship: Supplier shall have no power to bind the University of California and shall not, under any circumstances, be considered to be an agent, representative or fiduciary of any or all of the preceding. Instead, Supplier is an independent contractor and neither it nor its employees, agents, contractors, or subcontractors is or will be an employee, agent, or representative of UC during the period it and/or they are performing services under this Agreement. Supplier acknowledges its responsibility for the full payment of wages or other compensation of, as well as any benefits for employees, agents, contractors, or subcontractors engaged by it in the performance of this Agreement.

14.0

SOFTWARE TERMS

The following additional terms apply only to transactions covering operating software resident on Xerox-brand Equipment:

- 14.1 Software License: The following terms apply to copyrighted software and the accompanying documentation, including, but not limited to, operating system software, provided with or within the Xerox-brand Equipment acquired hereunder ("Base Software"). This license does not apply to any Diagnostic Software or to any software and accompanying documentation made subject to a separate license agreement.

- A) Xerox grants you a non-exclusive, non-transferable license to use the Base Software within the United States, its territories, and possessions (the "United States") only on or with the Equipment with which (or within which) it was delivered. Title to the Base Software and all copyrights and other intellectual property rights in it shall at all times reside solely with Xerox and/or its licensors (who shall be considered third-party beneficiaries of this Agreement's software and limitation of liability provisions). Base Software may contain, or be modified to contain, computer code capable of automatically disabling proper operation or functioning of the Equipment. Such disabling code may be activated if: (a) Xerox is denied reasonable access to the Base Software to periodically reset such code; (b) you otherwise are in default of any material obligations under this Agreement and shall fail to cure such default or breach within thirty (30) days after notice thereof by Xerox or, (c) your license is terminated or expires.
- B) Xerox may terminate your license for any Base Software (1) immediately if you no longer use or possess the Equipment or are a lessor of the Equipment and your first lessee no longer uses or possesses it, or (2) upon the termination of any agreement under which you have rented or leased the Equipment.
- C) If you transfer possession of the Equipment after you obtain title to it, Xerox will offer the transferee a license to use the Base Software within the United States on or with it, subject to Xerox's then-applicable terms and license fees, if any, and provided the transfer is not in violation of Xerox's rights.
- D) Xerox warrants that the Base Software will perform in material conformity with its user documentation for a ninety (90) day period from the date it is delivered or, for software installed by Xerox, the date of software installation. Neither Xerox nor its licensors warrant that the Base Software will be free from errors or that its operation will be uninterrupted.

14.2 Software Support: During the period that Xerox (or a designated servicer) provides Basic Services for the Equipment but in no event longer than five (5) years after Xerox stops taking orders from customers for their acquisition of the subject model of Equipment, Xerox (or a designated servicer) will also provide software support for the Base Software under the following terms.

- A) Xerox will assure that Base Software performs in material conformity with its user documentation and will maintain a toll-free hotline during standard business hours to answer related questions.
- B) Xerox may make available new releases of the Base Software that primarily incorporate coding error fixes and are designated as "Maintenance Releases". Maintenance Releases are provided at no charge and must be implemented within six (6) months after being made available to you or upon the next service call whichever is later. Each new Maintenance Release shall be considered Base Software governed by these Software Terms. New releases of the Base Software that are not Maintenance Releases, if any, may be subject to additional license fees at Xerox's then-current pricing and shall be considered Base Software governed by these Software Terms (unless otherwise noted). Xerox will not be in breach of its software support obligations hereunder if, in order to implement, in whole or in part, a new release of Base Software provided or made available to you by Xerox, you must procure, at your expense, additional hardware and/or software from Xerox or any other entity. You agree to make a good faith effort to return or destroy all prior releases.

- C) Xerox will use reasonable efforts, either directly and/or with its vendors, to resolve coding errors or provide workarounds or patches, provided you report problems as specified by Xerox.
 - D) Xerox shall not be obligated (1) to support any Base Software that is two or more releases older than Xerox's most current release or (2) to remedy coding errors if you have modified the Base Software.
- 14.3 **Diagnostic Software:** Software used to maintain the Equipment and/or diagnose its failures or substandard performance (collectively "Diagnostic Software") is embedded in, resides on, or may be loaded onto the Equipment. The Diagnostic Software and method of entry or access to it constitute valuable trade secrets of Xerox. Title to the Diagnostic Software shall at all times remain solely with Xerox and/or Xerox's licensors. You agree that (a) your acquisition of the Equipment does not grant you a license or right to use the Diagnostic Software in any manner, and (b) that unless separately licensed by Xerox to do so, you will not use, reproduce, distribute, or disclose the Diagnostic Software for any purpose (or allow third parties to do so). You agree at all times (including subsequent to the expiration of this Agreement) to allow Xerox to reasonably access, monitor, and otherwise take steps to prevent unauthorized use or reproduction of the Diagnostic Software.
- 14.4 **Infringement:** Xerox will defend the Customer from and pay any ultimate judgment for, infringement in the United States by Equipment or Xerox Operating System Software ("Software") of any patent, trademark, trade secret, protected semiconductor chip mask work, or copyright if Customer promptly notifies Xerox in writing of any alleged infringement, allows Xerox to defend, and cooperates with Xerox. Xerox is not responsible for any non-Xerox litigation expenses or settlements unless Xerox agrees to them in writing. Xerox is not liable for any infringement due to Equipment or Software being made or modified by the Customer or Customer requested specifications or designs, or being used or sold in combination with equipment, software, or supplies not provided by Xerox. Xerox makes no other express or implied warranty of non-infringement and has no other liability for infringement or any damages therefrom. To avoid an infringement (even if not alleged) Xerox may, at its option, at no charge to Customer, obtain a license to use, modify, or substitute an equivalent item for the infringing equipment or software.

15.0

EXCEPTIONS TO THE UNIVERSITY OF CALIFORNIA APPENDIX "A"

The following are exceptions or replacement language to the terms and conditions as stated in the University of California Appendix "A" for this contract:

Article 4B: Cancellation for Vendor Default: Xerox requests thirty (30) days after receipt of written notice of default to cure its performance before the University exercises its options under this provision.

Article 10: Indemnity, B. Proprietary Rights: Xerox agrees to this paragraph in its entirety but Xerox's indemnity shall not apply to any infringement arising solely from the use or sale of equipment in combination with any device or Equipment not provided hereunder by Xerox, or to any infringement caused by modification of the Equipment by other than Xerox.

Article 17: Insurance, Hold Harmless: Indemnification is contingent upon Customer giving Xerox written notice, by registered mail, promptly after it becomes aware of any claim to the indemnified hereunder and permits Xerox to control the defense of any such claim or action at Xerox's own expense. Notice shall be sent to "Corporate Risk, Xerox Corporation, Long Ridge Road, Stamford, Connecticut, 06940." Customer agrees that Xerox may employ attorneys of its own choice to appear and defend the claim or action and that Customer shall do nothing to compromise the defense of such claim or action or any settlement thereof and shall provide Xerox with all reasonable assistance which Xerox may require. Xerox shall not be obligated to indemnify the University against the University's own acts or omissions.

Except for indemnified matters and to the extent permitted by applicable law, all other liability of Xerox to the Customer for damages of any kind or type, including but not limited to indirect, consequential, incidental, or special damages, arising from Xerox' performance or failure to perform under this Contract or by virtue of Xerox' tortious conduct (including negligence whether passive or active) shall be limited to the amounts paid by Customer under this Agreement. Provided, however, that the foregoing limitation of liability shall not apply to claims by the Customer for personal injury or damage to real or tangible property caused by Xerox' negligence.

16.0

EXCEPTIONS TO THE UNIVERSITY OF CALIFORNIA APPENDIX "F"

The following are exceptions or replacement language to the terms and conditions as stated in the University of California Appendix "F" for this contract:

Article 5: Cancellation for Vendor Default: Xerox requests thirty (30) days after receipt of written notice of default to cure its performance before the University exercises its options under this provision.

Article 11: Proprietary Rights Indemnity: Xerox agrees to this paragraph in its entirety but Xerox's indemnity shall not apply to any infringement arising solely from the use or sale of equipment in combination with any device or Equipment not provided hereunder by Xerox, or to any infringement caused by modification of the Equipment by other than Xerox.

Article 13: Assignment: Note that Xerox automatically assigns its leases to a wholly owned subsidiary of Xerox. Such assignment shall be transparent to the University.

Article 19: Insurance, Hold Harmless: Indemnification is contingent upon Customer giving Xerox written notice, by registered mail, promptly after it becomes aware of any claim to the indemnified hereunder and permits Xerox to control the defense of any such claim or action at Xerox's own expense. Notice shall be sent to "Corporate Risk, Xerox Corporation, Long Ridge Road, Stamford, Connecticut, 06940." Customer agrees that Xerox may employ attorneys of its own choice to appear and defend the claim or action and that Customer shall do nothing to compromise the defense of such claim or action or any settlement thereof and shall provide Xerox with all reasonable assistance which Xerox may require. Xerox shall not be obligated to indemnify the University against the University's own acts or omissions.

Except for indemnified matters and to the extent permitted by applicable law, all other liability of Xerox to the Customer for damages of any kind or type, including but not limited to indirect, consequential, incidental, or special damages, arising from Xerox' performance or failure to perform under this Contract or by virtue of Xerox' tortious conduct (including negligence whether passive or active) shall be limited to the amounts

paid by Customer under this Agreement. Provided, however, that the foregoing limitation of liability shall not apply to claims by the Customer for personal injury or damage to real or tangible property caused by Xerox' negligence.

This Agreement, together with the above named instruments, constitute the entire agreement between UC and Supplier with respect to the subject matter hereof and supersedes all previous negotiations, proposals, commitments, writings, advertisements, publications and understandings.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written, such parties acting by their officers, being thereunto duly authorized.

**THE REGENTS OF
THE UNIVERISTY OF CALIFORNIA**

Signature

Name, Printed or Typed

Title

Date

XEROX CORPORATION

Signature

Name, Printed or Typed

Title

Date